

Pumpkins are considered to be food and are subject to the low rate of State tax. This is the case so long as the pumpkins are sold in a condition suitable for human consumption. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

September 26, 2005

Dear Xxxxx:

This letter is in response to your letter dated June 1, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a CPA firm who assists clients in the preparation of sales tax returns.

I am writing today to request a Administrative ruling on what the appropriate sales tax rate is to be applied to the sale of pumpkins. I have called the Illinois Department of Revenue in Springfield and have spoken to several people who have told me that it is considered a food and that the low food sales tax rate applies, but we have been unable to find written documentation substantiating this. I have also called and spoken to several grocery store chains about the sale of pumpkins and they have also responded that they apply the low food sales tax rate to their sales of pumpkins. It was recommended that I contact you to receive a Ruling on this matter so that we have proper documentation.

If you need further information, please contact me. I look forward to your response

For your information, we refer you to the Department's regulation for "Food, Drugs, Medicines and Medical Appliances," 86 Ill. Adm. Code 130.310. This regulation describes how sales of food and drugs can be subject to either high (6.25%) or low (1%) State tax rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

As you can see, the regulation provides that food which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), is taxed at the State rate of 1%. Products that do not meet the appropriate definition of food, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes.

Pumpkins are considered to be food and thus are subject to the low rate of State tax. This is the case so long as the pumpkins are sold in a condition suitable for human consumption. If pumpkins have been rendered unsuitable for human consumption, e.g. scooped out and carved, or otherwise not suitable for human consumption, they are subject to the 6.25% state rate plus applicable local taxes.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk